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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91221196
Party	Defendant Free Range Presents Dallas, LLC
Correspondence Address	ELISABETH A. EVERT HITCHCOCK EVERT LLP PO BOX 131709 DALLAS, TX 75313-1709 docket@hitchcockevert.com;eevert@hitchc
Submission	Answer
Filer's Name	Megan M. O'Laughlin
Filer's e-mail	molaughlin@hitchcockevert.com, docket@hitchcockevert.com
Signature	/s/ Megan M. O'Laughlin
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application No. 86/234,051
Trademark: THE RUSTIC

JAMES G. CAFARELLI,)	
Opposer,)	
)	
vs.)	Opposition No. 91221196
)	
FREE RANGE PRESENTS DALLAS, LLC,)	
Applicant.)	

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Free Range Presents Dallas, LLC dba The Rustic (“The Rustic”), a Texas limited liability company having its principal place of business at 3656 Howell Street, Dallas, Texas 75204, the owner of U.S. Application Serial No. 86/234,051 (“The Rustic’s Mark”), for its Answer to the Opposition filed by James G. Cafarelli (“Opposer”), pleads and avers as follows:

1. Answering number paragraph 1 of the Opposition, The Rustic denies that the similarity between the parties’ marks is very high.
2. Answering number paragraph 2 of the Opposition, The Rustic admits that it offers restaurants and bar services but denies that similarity between the nature of the services is high. The Rustic’s services feature the rare combination of equal billing for live music and restaurant services, and Opposer’s services claimed in the cited registration make absolutely no reference to live music or entertainment in connection with restaurant services.
3. Answering number paragraph 3 of the Opposition, The Rustic admits that it offers “sit-down service,” a bar, and an outdoor patio, but denies the remaining allegations.
4. Answering number paragraph 4 of the Opposition, The Rustic admits that both marks contain the word “Rustic” but denies the remaining allegations.
5. Answering number paragraph 5 of the Opposition, The Rustic admits the allegations therein.

The Rustic denies that registration of The Rustic's mark "will create buyer confusion as to the source of the goods and/or services." The Rustic denies that registration of The Rustic's mark will cause Opposer "adverse commercial impact." The Rustic denies that there is a likelihood of confusion.

AFFIRMATIVE DEFENSES

6. Opposer has not demonstrated how it is likely to be damaged by the registration of The Rustic's Mark, and The Rustic affirmatively alleges that Opposer will not be damaged by the registration of The Rustic's Mark.

7. The Rustic affirmatively alleges that there is no likelihood of confusion between The Rustic's Mark and Opposer's claimed mark. The parties' marks are used in a manner that makes consumer confusion unlikely. The Rustic offers live music 4-6 days per week and is a music venue every bit as much as it is a restaurant. In other words, there is an equal emphasis on both the dining experience and the music experience, contrasting sharply with Opposer's chef-driven, fine dining, "Old World style bistro" restaurant services.

8. The Rustic affirmatively alleges that the word "Rustic"—the sole common element between the parties' marks—is so commonly used that the public will look to other elements to distinguish the source of the goods or services. Because the relevant consuming public is accustomed to encountering marks in the restaurant sphere that contain "RUSTIC," consumers will look to other elements to distinguish the source of the respective services—that is, The Rustic's unusual conversion of "RUSTIC" from an adjective to a noun by addition of the prefix "THE" and Opposer's addition of the word KITCHEN.

In view of the foregoing, The Rustic contends that this Opposition is groundless and baseless in fact; and that Opposer has not shown that it has been, or is likely to be, damaged by the registration of The Rustic's Mark.

The Rustic prays that this Opposition be dismissed and that registration of U.S. Trademark Application Serial No. 86/234,051 be granted.

Dated: May 4, 2015

Respectfully submitted,

/s/ Megan M. O'Laughlin
Megan M. O'Laughlin
Elisabeth A. Evert
Hitchcock Evert LLP
P.O. Box 131709
Dallas, TX 75213-1709

Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Applicant's Answer to Opposition was mailed First Class Mail, postage prepaid, to Opposer James G. Cafarelli, 15 Cherokee Road, Canton, MA 02021 on May 4, 2015.

/s/ Megan M. O'Laughlin
Megan M. O'Laughlin